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**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
OAKLAND DIVISION**

JERRY BECHHOLD,

No. C 07-0870 SBA

Plaintiff,

ORDER

v.

[Docket No. 20]

ROGER BOGNER, *et al.*,

Defendants.

Before the Court is plaintiff Jerry R. Bechhold's motion for a stay of these proceedings. No hearing was noticed or calendared for this motion, and after reading and considering the arguments presented by the parties, the Court finds this matter appropriate for resolution without a hearing. *See* FED. R. CIV. P. 78. For the reasons that follow, the Court DENIES the motion.

Also before the Court is an outstanding motion to strike plaintiff Bechhold's declaration submitted in connection with a motion dismiss [Docket No. 20]. As the motion to dismiss was ruled upon May 1, 2007, the motion to strike is DENIED as moot.

BACKGROUND

Plaintiff Bechhold requests this proceeding be stayed pending the disposition of a motion for sanctions he has brought against defendant Roger Bogner in the United States District Court for the Western District of Michigan. The motion for sanctions is premised upon the same conduct giving rise to the action before this Court.

In 2002, Bechhold filed a lawsuit against defendant Bogner in the Western District of Michigan alleging patent and trademark infringement. The alleged infringement was based upon Bogner's manufacturing and distributing a fishing lure called the "Spindoctor." Bechhold claimed that the "Spindoctor" was modeled after his fishing lure, the "Fishcatcher" or "Hootchie Mama." The parties entered into a consent judgment and stipulated injunction, which was issued by the court in the Western District of Michigan on January 27, 2003. That court has continuing jurisdiction to enforce the consent

1 judgment.

2 According to Bechhold, “Defendant Bogner, although fully on notice of the terms of the January
3 2003 Consent Judgment, re-commenced manufacturing a flasher product line closely resembling the
4 Fishcatcher and nationally distributed, advertised, offered and sold the newly infringing products to its
5 customers in defiance of the express injunction set forth, and his contractual obligations under the
6 January 2003 settlement agreement.” Mot. at 2-3. On December 26, 2006, plaintiff Bechhold filed a
7 complaint in the Superior Court of Sonoma County. Bechhold contends this has created a likelihood
8 of confusion with his lure, and therefore asserted four causes of action for relief: (1) violation of the
9 Unfair Claims Practices Act; (2) unfair competition; (3) violation of the California Uniform Trade
10 Secrets Act; and (4) common law trademark infringement. On February 9, 2007, the defendants
11 removed the action to this Court based on the diverse citizenship of the parties.

12 On May 1, 2007, this Court denied the defendants’ motion to dismiss for lack of jurisdiction, but
13 granted the motion to dismiss Bechhold’s third cause of action for violation of the California Uniform
14 Trade Secrets Act for failure to state a claim. *See* Docket No. 24. Following the Court’s ruling on the
15 motion to dismiss, the plaintiff filed this motion to stay. Attached to the plaintiff’s motion is an affidavit
16 declaring that he will file a motion for contempt in the United States District Court for the Western
17 District of Michigan on or before June 15, 2007. The motion for contempt will assert that the
18 defendants violated the terms of the “Consent Judgment and Permanent Injunction” entered by that court
19 on January 27, 2003. On July 18, 2007, the plaintiff submitted a copy of the contempt motion filed in
20 the Western District of Michigan. *See* Docket No. 34. That motion shows that it was noticed for
21 September 24, 2007. Neither party has indicated the status or resolution of the motion for contempt.

22 23 **LEGAL STANDARDS**

24 “A district court has discretionary power to stay proceedings in its own court under *Landis v.*
25 *North American Co.*, 299 U.S. 248, 254 (1936).” *Lockyer v. Mirant Corp.*, 398 F.3d 1098, 1109 (9th
26 Cir. 2005).

1 A trial court may, with propriety, find it efficient for its own docket and the fairest
2 course for the parties to enter a stay of an action before it, pending resolution of
3 independent proceedings which bear upon the case. This rule applies whether the
separate proceedings are judicial, administrative, or arbitral in character, and does not
require that the issues in such proceedings are necessarily controlling of the action before
the court.

4 *Leyva v. Certified Grocers of California, Ltd.*, 593 F.2d 857, 863-64 (9th Cir. 1979).

5 In determining whether to grant a stay, a court should weigh competing interests, such as: (1)
6 “possible damage which may result from the granting of a stay,” (2) “the hardship or inequity which a
7 party may suffer in being required to go forward,” and (3) “the orderly course of justice measured in
8 terms of the simplifying or complicating of issues, proof, and questions of law which could be expected
9 to result from a stay.” *CMAX, Inc. v. Hall*, 300 F.2d 265, 268 (9th Cir. 1962); *see also Filtrol Corp. v.*
10 *Kelleher*, 467 F.2d 242, 244 (9th Cir. 1972). The party moving for the stay bears the burden of proving
11 it is warranted. *See Clinton v. Jones*, 520 U.S. 681, 708 (1997) (citing *Landis*, 299 U.S. at 255).

12 13 ANALYSIS

14 The plaintiff contends that “inefficient re-litigation of core legal and factual issues common to
15 both suits will be avoided” by a stay pending disposition of the motion for sanctions in the Western
16 District of Michigan, as “[t]he identical flasher design and technology at issue in both litigations raises
17 repetitive and recurring legal and factual issues requiring construction by the court.” Mot. at 4. The
18 plaintiff further argues that there will be inequity in the absence of a stay “by Plaintiff’s being forced
19 to pursue multiple actions to address the Defendant’s culpable conduct.” *Id.*

20 The defendants point out that the plaintiff has failed to properly notice his motion or serve it.
21 Under Civil Local Rule 7-1(a) “Any written request to the Court for an order must be presented by one
22 of the following means: (1) Duly noticed motion pursuant to Civil L.R. 7-2” Local Rule 7-2 adds
23 that “except for motions made during the course of a trial or hearing, all motions must be filed, served
24 and noticed in writing on the motion calendar of the assigned Judge for hearing not less than 35 days
25 after service of the motion.” The plaintiff’s motion for stay was never noticed for hearing, nor
26 calendared, nor properly served upon the defendants in compliance with Local Rule 5-6, which requires

1 a certificate of service with a sworn declaration as set forth by 28 U.S.C. § 1746. The motion contains
2 a “certificate of mailing via fax,” but there is no declaration consistent with section 1746, which
3 mandates a signed affirmation that “I declare (or certify, verify, or state) under penalty of perjury that
4 the foregoing is true and correct. Executed on (date).” 28 U.S.C. § 1746. Local Rule 5-6(b) provides
5 that “Failure to provide an acknowledgment or certificate of service shall not be a ground for the Clerk
6 refusing to file a paper or pleading. However, any such document may be disregarded by the Judge if
7 an adverse party timely objects on the ground of lack of service.” The defendant did timely object. The
8 lack of notice for a hearing and lack of service are grounds for denying the motion.

9 Denial of the motion is also warranted on the merits. The plaintiff identifies the hardship to him
10 with proceeding with his case in this Court as “being forced to pursue multiple actions to address the
11 Defendant’s culpable conduct.” But the plaintiff is not actually being forced to pursue multiple actions.
12 According to the plaintiff’s allegations, the same conduct by the defendants that is the basis of this suit
13 is covered by the consent judgment entered by the court in Michigan. The Michigan court has
14 continuing jurisdiction over the consent judgment and the plaintiff has the option of seeking relief in
15 that court. It is by choice that the plaintiff has instituted the action in this forum while also litigating
16 in another. Moreover, the plaintiff has the option of seeking a Court order to voluntarily dismiss this
17 action without prejudice under Federal Rule of Civil Procedure 41(a)(2).

18 The defendants maintain they will be prejudiced by a stay because they

19 are entitled to a complete adjudication of the claims against them on the merits pursuant
20 to California law, and not simply [by] way of a motion under Michigan law.
21 Specifically, they are entitled to discover the basis for the claims alleged against them,
investigate and gather evidence to contradict those claims, file any appropriate
dispositive motions and, if necessary, present its defenses to a jury.

22 Docket No. 33, at 4.

23 The plaintiff has not carried his burden in demonstrating that the balance of interests weigh in
24 his favor or that a stay of this action is warranted. The plaintiff instituted this action, chose to also
25 pursue relief in another judicial forum, has the option of voluntarily dismissing the case in this Court,
26 and has not shown why the defendants should not be able to pursue resolution of the case he has brought
27

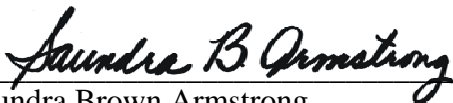
1 against them.

2
3 **CONCLUSION**

4 Accordingly, plaintiff Jerry R. Bechhold's motion for a stay of these proceedings is DENIED.
5 In addition, the defendants' motion to strike [Docket No. 20] is DENIED as moot.

6 IT IS SO ORDERED.

7
8 January 16, 2008

9 
Saundra Brown Armstrong
United States District Judge

1 UNITED STATES DISTRICT COURT
2 FOR THE
3 NORTHERN DISTRICT OF CALIFORNIA

4 BECHHOLD et al,

5 Plaintiff,

6 v.

7 BOGNER ET AL et al,

8 Defendant.
9 _____/

Case Number: CV07-00870 SBA

CERTIFICATE OF SERVICE

10 I, the undersigned, hereby certify that I am an employee in the Office of the Clerk, U.S. District Court,
11 Northern District of California.

12 That on January 17, 2008, I SERVED a true and correct copy(ies) of the attached, by placing said
13 copy(ies) in a postage paid envelope addressed to the person(s) hereinafter listed, by depositing said
14 envelope in the U.S. Mail, or by placing said copy(ies) into an inter-office delivery receptacle located
15 in the Clerk's office.

16 Jerry Bechhold
17 P.O. Box 967
18 Foresthill, CA 95631

19 Dated: January 17, 2008

Richard W. Wieking, Clerk
By: LISA R CLARK, Deputy Clerk